



**Legislative Bulletin.....July 12, 2005**

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**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$44 million over 5 years

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** less than \$500,000 a year

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

**H.R. 804**—To exclude from consideration as income certain payments under the national flood insurance program (Baker)

**Order of Business:** The bill is scheduled to be considered on Wednesday, July 12<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** The bill would prevent federal agencies from considering flood mitigation grants, under the National Flood Insurance Program (NFIP), as income when administering means-tested and income-based federal benefit programs.

**Background:** The Flood Insurance Reform Act of 2004 (P.L. 108-264) reauthorized NFIP and secured reforms to ensure that oft-flooded areas received either mitigation assistance grants or significantly higher premiums. FEMA had estimated that these repetitive flood areas were costing the federal government \$200 million annually. In July 2004, the IRS ruled that such grants must be reported as income for tax purposes, leading some homeowners to decline assistance so as to not lose their eligibility to other forms of federal assistance (education, food stamps, health care, etc.) based on similar calculations of income.

**Committee Action:** H.R. 804 was referred to the Financial Services Committee on February 15, 2005. The committee reported the legislation on April 14<sup>th</sup> by voice vote.

**Cost to Taxpayers:** According to CBO, the bill would “increase the number of persons eligible for certain means-tested programs...[but] that the number of people newly eligible for these programs as a result of this legislation would be small.” CBO estimates the bill’s cost to be less than \$500,000 a year.

**Does the Bill Create New Federal Programs or Rules?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The Financial Services Committee, in House Report 109-44, cites constitutional authority in Article I, Section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

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**H.R. 68—To require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the establishment of the National Aeronautics and Space Administration and the Jet Propulsion Laboratory (Culberson)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, July 12<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 68 “requires the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the establishment of the National Aeronautics and Space Administration and the Jet Propulsion Laboratory.” H.R. 68 provides for the minting of fifty-thousand \$50 gold coins, as well as 3.6 million (400,000 each of 9 different designs) \$1 silver coins. Additionally, the measure directs “each Federal agency and instrumentality of the United States, including the Department of Defense, the Smithsonian Institution, the National Aeronautics and Space Administration, and the Jet Propulsion Laboratory, that has in its possession any craft, or any part of a craft, that flew in space,” to retrieve the gold, silver, copper, and other metals from the aircraft in order for the United States Mint to combine

the metals and be included in the production of the coins produced under this Act. The bill sets a sale surcharge of \$10 for the \$1 coin and \$50 for the \$50 coin.

**Additional Information:** According to Committee Report [109-133](#), “H.R. 68 seeks to recognize the 50th anniversary of the National Aeronautics and Space Administration and of the Jet Propulsion Laboratory with the issuance of commemorative coins in 2008, each of which would contain trace amounts of metal that had been part of a spacecraft that had actually flown in space but is no longer needed for re-use, research or other purposes. Surcharges would be paid to a need-based fund for the survivors of NASA personnel who died of injuries suffered in the performance of their official duties.”

**Committee Action:** On February 22, 2005, the bill was introduced and referred to the House Committee on Financial Services, which considered it, held a mark-up, and reported it to the whole House by a voice vote on April 27, 2005. The measure was also referred to the House Ways and Means Committee, which discharged the bill without consideration.

**Cost to Taxpayers:** CBO estimates enactment of H.R. 68 would have no significant net impact on direct spending over the 2005-2015 period. However, “CBO estimates this program would be one of the largest and most complex commemorative coin programs ever managed by the Mint. H.R. 68 could raise as much as \$38.5 million in surcharges if the Mint sells the maximum number of authorized coins. However, recent commemorative coin sales suggest that receipts would be about \$23 million. Under current law, the Mint must ensure that it does not lose money producing commemorative coins before transferring any surcharges to a recipient organization. In addition, the recipient organization is responsible to match all coin surcharges with funds raised from the private sector within two years, or the surcharge amounts are deposited with the Treasury as miscellaneous receipts.

CBO expects that those receipts from such surcharges would be transferred to the NASA Family Assistance Fund in fiscal year 2009. Thus, we estimate that the act would reduce direct spending by \$23 million in 2008 and would increase direct spending by \$23 million in 2009. Excluding surcharges, CBO expects that the Mint would retain and spend any additional net proceeds generated from such sales to fund other commercial activities and would have a negligible net budgetary impact over time.”

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The Committee finds Constitutional authority in Article 1, Section 8, Clause 1 (relating to the general welfare of the United States) and Clause 3 (relating to the power to regulate interstate commerce).

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## **H.Res. 352 — Providing that the House of Representatives will focus on removing barriers to competitiveness of the United States economy (Tiahrt)**

**Order of Business:** The resolution is scheduled for consideration on Tuesday, July 12<sup>th</sup>, subject to a closed rule.

**Summary:** H.Res. 352 contains 22 findings regarding barriers to U.S. competitiveness and resolves that:

- “The House of Representatives recognizes that there are existing barriers to keeping and creating jobs in the United States, particularly in the following areas: (1) Trade restrictions and inequality; (2) Bureaucratic red tape; (3) Innovation and investment; (4) Health care security; (5) Lifelong learning; (6) Tax burden and complexity; (7) Lawsuit abuse and litigation management; (8) Energy self-sufficiency and security.
- “The House of Representatives recognizes that improving the competitiveness of the United States economy depends on congressional action to remove barriers in [these] areas.
- “The House of Representatives expresses the sense that every Federal agency should review its rules and policies regarding the competitiveness of the United States economy.”

**Additional Background:** The resolution’s findings detail specific information regarding the U.S. economy, including that, “the Office of Management and Budget recently found that for every dollar of direct budget expenditure devoted to regulatory activity, the private sector spends \$45 to comply with regulations; in 2003, American taxpayers spent an estimated \$203.5 billion to comply with the Federal income tax code, enough to buy more than 5 million new luxury 4-door sedans at retail price and by 2007, annual compliance costs are projected to rise to \$244 billion; the cost of frivolous litigation in the United States exceeds \$230 billion per year, an amount equal to more than \$2,000 per American household; and in 2002, trial lawyers received approximately \$40 billion from litigation, more than the annual revenues of Microsoft and Intel, and twice the revenue of Coca-Cola.”

**Committee Action:** The bill was introduced on July 11, 2005, and referred jointly to the Committees on Education and the Workforce and the House Government Reform, neither of which took official committee action.

**Cost to Taxpayers:** None.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

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## **H.R. 739 — Occupational Safety and Health Small Business Day In Court Act (Norwood)**

**Order of Business:** The bill is scheduled for consideration on Tuesday, July 12<sup>th</sup>, subject to a closed rule (H.Res. 351).

**NOTE:** A nearly identical bill in the 108<sup>th</sup> Congress (H.R. 2729) passed 228-199 (<http://clerk.house.gov/evs/2004/roll184.xml>) and was appended onto a related bill (H.R. 2728), which was not considered by the Senate.

**Summary:** H.R. 739 would modify the Occupational Safety and Health Act (29 U.S.C. Sec. 659) to provide exceptions to the 15-day deadline for employers to file responses to citations made by the Occupational Safety and Health Agency (OSHA). Under current law, employers who receive a citation or proposed assessment of penalty from OSHA must file a notice of contest within 15 days from receipt of the citation and if the deadline is not met, the citation and assessment are deemed a final order. Since the early 1980s, the OSHA Commission has sometimes granted relief from the final order in cases where an employer filed a late notice of contest because of mistake, inadvertence, surprise, or excusable neglect. H.R. 739 codifies this practice into law to clarify that a litigant under the OSH Act may be relieved from a default judgment when its failure to contest a citation in a timely manner results from “mistake, inadvertence, surprise, or excusable neglect.” (The language inserted by H.R. 739 is identical to language contained in Federal Rule of Civil Procedure 60(b), which applies to all federal court cases.)

**Additional Background:** According to the Committee Report [109-46](#), H.R. 739, “is intended to give to parties under the Occupational Safety and Health Act of 1970 (the ‘OSH Act’) the same basic right to seek relief from a default judgment as that possessed by nearly every other federal litigant in the nation. Specifically, H.R. 739 clarifies the authority of the Occupational Safety and Health Review Commission (‘OSHRC’ or the ‘Commission’) to grant relief to an employer that by reason of mistake, inadvertence, surprise, or excusable neglect fails to respond to a citation within the fifteen working days provided under law. H.R. 739 maintains Congress’ desire to promote a necessary finality in disputes under the OSH Act while preventing the avoidable injustices that may result under current law. The legislation is a remedial measure intended to prevent injustice and assure fairness in the adjudicatory process, and is purposefully designed to cause no diminution in the substantive workforce protections already in place under the OSH Act.”

**Committee Action:** On February 10, 2005, H.R. 739 was introduced and referred to the Committee on Education and the Workforce, which considered, marked up and ordered the bill to be reported to the full House on April 13, 2005, by a vote of 27-19.

**Cost to Taxpayers:** CBO estimates that implementing H.R. 739 would not have any effect on the federal budget.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No

**Constitutional Authority:** The Education and the Workforce Committee, in House Report [109-46](#), cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to regulate interstate commerce).

**Outside Organizations:** A wide variety of organizations support H.R. 739, including the American Farm Bureau Federation, the American Trucking Association, Associated Builders and Contractors, National Association of Manufacturers, the National Federation of Independent Business, the National

Restaurant Association, and the Retail Industry Leaders Association. In addition, the U.S. Chamber of Commerce is considering making H.R. 739 a “key vote” in its annual voting scorecard.

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## **H.R. 740—Occupational Safety and Health Review Commission Efficiency Act (Norwood)**

**Order of Business:** The bill is scheduled for consideration on Tuesday, July 12<sup>th</sup>, subject to a closed rule (H.Res. 351). The rule provides that H.R. 740 will be appended onto H.R. 739 upon passage of both.

**Summary:** H.R. 740 would add two additional members to the Occupational Safety and Health Review Commission (OSHRC) and specifies that the terms of office of the two newly appointed members will be for terms expiring on April 27, 2008, and April 27, 2010. In addition, the bill would stipulate that all Commissioners must be chosen from among persons who, by reason of *legal* training, education, or experience, are qualified to serve in the position. H.R. 740 would also authorize the President to extend the expiring term of a member of OSHRC by up to 365 days, until a replacement can be confirmed by the Senate.

**Additional Background:** The Occupational Safety and Health Review Commission (OSHRC) is an independent federal agency responsible for hearing disputes arising from the Occupational Safety and Health Act. Under current law, OSHRC consists of three members appointed by the President. Concerns have been raised over the effectiveness of the Commission (decisions have often been delayed because of membership vacancies, the lack of a quorum, or disagreement among commissioners) that H.R. 740 attempts to address.

A nearly identical bill in the 108<sup>th</sup> Congress (H.R. 2729) passed 228-199 (<http://clerk.house.gov/evs/2004/roll184.xml>) and was appended onto a related bill (H.R. 2728), which was not considered by the Senate.

**Committee Action:** On February 10, 2005, H.R. 740 was referred to the Committee on Education and the Workforce, which, on April 13<sup>th</sup>, marked up and ordered the bill reported to the full House by a vote of 27-19.

**Cost to Taxpayers:** CBO estimates that implementing H.R. 740 would authorize \$1 million per year over the FY2006-2010 period.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The Education and the Workforce Committee, in House Report 109-47, cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to regulate interstate commerce).

**Outside Organizations:** A wide variety of organizations support H.R. 740, including the American Farm Bureau Federation, the American Trucking Association, Associated Builders and Contractors, National Association of Manufacturers, the National Federation of Independent Business, the National Restaurant Association, and the Retail Industry Leaders Association. In addition, the U.S. Chamber of Commerce is considering making H.R. 740 a “key vote” in its annual voting scorecard.

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## **H.R. 741—Occupational Safety and Health Independent Review of OSHA Citations Act (Norwood)**

**Order of Business:** The bill is scheduled for consideration on Tuesday, July 12<sup>th</sup>, subject to a closed rule (H.Res. 351). The rule provides that H.R. 741 will be appended onto H.R. 739 upon passage of both.

**Summary:** H.R. 741 requires that courts defer, when “reasonable,” to the independent Occupational Safety and Health Review Commission (OSHRC) in making decisions on contested citations.

**Additional Background:** Under current practice, the Occupational Safety and Health Administration (OSHA) both gives the citations and makes the recommendation to the court in situations where citations are contested, creating what some argue is a conflict of interest that stacks the process against employers. H.R. 741 would give OSHRC recommendation authority, removing this apparent conflict.

OSHRC is an independent federal agency created to adjudicate contests of citations or penalties resulting from OSHA inspections of workplaces. OSHRC functions as an administrative court whose decisions can be appealed to the judicial court system.

An identical bill in the 108<sup>th</sup> Congress (H.R. 2730) passed 224-204 (<http://clerk.house.gov/evs/2004/roll185.xml>) and was appended onto a related bill (H.R. 2728), which was not considered by the Senate.

**Committee Action:** On February 10, 2005, H.R. 741 was referred to the Committee on Education and the Workforce, which, on April 13<sup>th</sup>, marked up and ordered the bill reported to the full House by a vote of 27-19.

**Cost to Taxpayers:** CBO confirms that H.R. 741 would have no effect on the federal budget.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** The Education and the Workforce Committee, in House Report 109-50, cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to regulate interstate commerce).

**Outside Organizations:** A wide variety of organizations support H.R. 741, including the American Farm Bureau Federation, the American Trucking Association, Associated Builders and Contractors, National Association of Manufacturers, the National Federation of Independent Business, the National Restaurant Association, and the Retail Industry Leaders Association. In addition, the U.S. Chamber of Commerce is considering making H.R. 741 a “key vote” in its annual voting scorecard.

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## **H.R. 742—Occupational Safety and Health Small Employer Access to Justice Act of 2005 (Norwood)**

**Order of Business:** The bill is scheduled for consideration on Tuesday, July 12<sup>th</sup>, subject to a closed rule.

**Note:** A nearly identical bill in the 108<sup>th</sup> Congress (H.R. 2731) passed 233 - 194 ([Roll no. 189](#)). <http://clerk.house.gov/evs/2004/roll189.xml> and was appended onto a related bill (H.R. 2728), which was not considered by the Senate.

**Summary:** H.R. 742 requires small businesses (defined as having no more than 100 employees and a net worth of no more than \$7 million) to be awarded attorneys’ fees and expenses in OSHA court cases where the business is the prevailing party, whether or not the position taken by OSHA was “substantially justified” or “special circumstances make an award unjust.” The bill would apply to proceedings commenced on or after the date of enactment. The committees report that H.R. 742 is intended to prevent non-meritorious lawsuits from proceeding, to encourage OSHA to ensure that the cases it brings against small businesses are meritorious, and to provide small businesses the means to adequately represent themselves when confronted by adjudicatory actions brought by a Federal agency with overwhelmingly superior legal resources.

**Additional Background:** In 1980, Congress passed the Equal Access to Justice Act (EAJA), 28 U.S.C. Sec. 2412 et seq., to enable small enterprises that successfully challenge government enforcement actions to recover their legal fees. The EAJA threshold for a small business is no more than 500 employees and a net worth of no more than \$7 million

Each year OSHA issues citations in approximately 28,000 cases across all employer groups. Employers with fewer than 101 employees accounted for approximately 70 percent of that caseload. (Most small employers cited by OSHA are construction-related firms.) Only about seven percent of the citations made to small firms are contested, or about 1,400 cases per year.

Under EAJA, an employer may not recover attorneys’ fees if the agency can show that its actions were “substantially justified.” According to the committees, this provision has significantly hindered the ability of employers to recover attorneys’ fees from OSHA, and has had a deterrent effect on attempts to do so. The Education Committee report states, “With a cadre of specialized lawyers backed by the federal treasury, it is far too easy for OSHA to come up with some purported justification for its bringing the case, thus tying the employer up in a second round of litigation as to whether OSHA’s actions were ‘substantially justified’.” One witness testified that, “Even if a small employer proves that he or she is innocent and OSHA should not have brought the case, that employer must still start another proceeding, incurring even more expenses, to prove that OSHA’s position was not

‘substantially justified.’ This is a formidable deterrent to seeking fees, particularly since OSHA can meet this test relatively easily.”

**Committee Action:** The bill was introduced on February 10, 2005, and referred jointly to the Committees on Education and the Workforce and on the Judiciary. The Education and the Workforce Committee considered it on April 14, 2005, and reported it out by a vote of 27-18. The Judiciary Committee considered it and reported it out by a vote of 18-11 on May 18, 2005.

**Cost to Taxpayers:** CBO estimates that implementing H.R. 742 would cost \$4 million in 2006 and \$39 million over FY06-2010, subject to appropriations. The costs arise from the payment of fees and expenses allowed under the bill, which under EAJA would come from the agency’s discretionary appropriations.

**Outside Organizations:** A wide variety of organizations support H.R. 742, including the American Farm Bureau Federation, the American Trucking Association, Associated Builders and Contractors, National Association of Manufacturers, the National Federation of Independent Business, the National Restaurant Association, and the Retail Industry Leaders Association. In addition, the U.S. Chamber of Commerce is considering making H.R. 742 a “key vote” in its annual voting scorecard.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** Both the Education and the Workforce Committee and the Judiciary Committee, in House Reports 109-061-Part I and II, cite Article I, Section 8, Clause 3 (commerce clause).

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